

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

PRESERVE OUR ISLANDS, et al.,

Plaintiffs,

v.

U.S. ARMY CORPS OF ENGINEERS,
et al.,

Federal Defendants,

and

NORTHWEST AGGREGATES
COMPANY,

Defendant-Intervenor.

Case No. CV-08-1353-RSM

STIPULATED SETTLEMENT
AGREEMENT AND ORDER
APPROVING

STIPULATED SETTLEMENT AGREEMENT

This Stipulated Settlement Agreement (“Stipulation”) is made between Plaintiffs,

STIPULATED SETTLEMENT AGREEMENT
REGARDING PLAINTIFFS’ CLAIM FOR
ATTORNEYS’ FEES AND COSTS

*U.S. Department of Justice
Environment and Natural Resources Div.
P.O. Box 7369
Washington, DC 20044-7369
Tel: (202) 305-0342*

1 Preserve our Islands, *et al.* (“Plaintiffs”) and Defendants, the U.S. Army Corps of Engineers,
 2 *et al.* (“Federal Defendants”) to resolve Plaintiffs’ claim for attorneys’ fees and costs in
 3 connection with Case No. 08-1353-DSM.
 4

5 WHEREAS on September 9, 2008, Plaintiffs filed a complaint in this Court alleging
 6 that the Corps’ decision to approve the permit for the construction of a dock on Maury Island,
 7 Washington (“Project”) violated the Endangered Species Act (“ESA”), National
 8 Environmental Policy Act (“NEPA”), Rivers and Harbors Act (“RHA”), Marine Mammal
 9 Protection Act (“MMPA”) and Magnuson-Stevens Fishery Conservation and Management
 10 Act (“MSA”), see Complaint (Dock. Entry No. 1);
 11

12 WHEREAS on November 19, 2008, Plaintiffs filed an Amended Complaint
 13 abandoning their MMPA and MSA claims, see Amended Complaint (Dock. Entry No. 10);
 14

15 WHEREAS on August 13, 2009, the Court granted Plaintiffs’ motion for summary
 16 judgment in part, denied Plaintiffs’ motion for summary judgment in part, and denied Federal
 17 Defendants’ cross motion for summary judgment based on violations of NEPA and the ESA
 18 (Dock. Entry No. 58) (“Summary Judgment Decision”).
 19

20 WHEREAS in the Summary Judgment Decision, the Court did not render a decision
 21 as to Plaintiffs’ RHA claim;
 22

23 WHEREAS on August 14, 2009, Defendant-Intervenor Northwest Aggregates
 24 Company appealed the Summary Judgment Decision to the U.S. Court of Appeals for the
 25 Ninth Circuit, which designated Defendant-Intervenors’ appeal as Case No. 09-35758 (“NW
 26 Aggregates’ Appeal”), Dock. Entry No. 60;
 27
 28

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1 WHEREAS on October 9, 2009, the Federal Defendants appealed the Summary
2 Judgment Decision to the U.S. Court of Appeals for the Ninth Circuit, which designated
3 Federal Defendants' appeal as Case No. 09-35917 ("Federal Defendants' Appeal"), see Dock.
4 Entry No. 68;
5

6 WHEREAS on December 16, 2009, the Federal Defendants voluntarily dismissed
7 Federal Defendants' Appeal;
8

9 WHEREAS on July 30, 2010, NW Aggregates voluntarily dismissed NW Aggregates'
10 Appeal;
11

12 WHEREAS Plaintiffs and Federal Defendants ("the parties") agree that it serves the
13 interests of the parties and judicial economy and efficiency to settle Plaintiffs' claim for
14 attorneys' fees and costs without the need for further litigation;
15

16 WHEREAS the parties enter into this Stipulation without any admission of fact or law,
17 or waiver of any claims or defenses, factual or legal;
18

19 ACCORDINGLY, THE PARTIES AGREE AND STIPULATE AS FOLLOWS:
20

21 1. The parties agree to the following terms in accordance with the Federal Rules
22 of Civil Procedure and the Local Rules of this court, and jointly move this Court to approve
23 this stipulation and sign the attached order.

24 2. The Federal Defendants agree to pay **\$81,500.00** to settle Plaintiffs' entire
25 claim for attorneys' fees and costs in connection with the above-captioned litigation.

26 3. A check shall be made payable in this amount to Gendler & Mann,
27 LLP, 1424 4th Ave., Ste. 1015, Seattle, Washington 98101. Federal Defendants agree to
28

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1 submit all necessary paperwork to the Department of Treasury's Judgment Fund Office
 2 pursuant to 16 U.S.C. § 1540(g)(4) within ten (10) business days of receipt of the signed court
 3 order approving this Stipulation.
 4

5 4. Plaintiffs agree to accept this payment in full satisfaction of any and all claims,
 6 demands, rights, and causes of action pursuant to the Equal Access to Justice Act, 28 U.S.C. §
 7 2412(d), the ESA, 16 U.S.C. § 1540(g), and/or any other statute and/or common law theory,
 8 through and including the date of this Stipulation, incurred in connection with this litigation,
 9 including: (a) fees or costs incurred in connection with Plaintiffs' RHA claim; and (b) fees or
 10 costs incurred in connection with the NW Aggregates' and Federal Defendants' Appeals.
 11

12 5. By this Stipulation, Federal Defendants do not waive any right to contest fees
 13 claimed by Plaintiffs, including the hourly rate, in any future litigation or continuation of the
 14 present action. Further, this Stipulation to attorneys' fees and costs has no precedential value
 15 and shall not be used as evidence in any other attorneys' fees litigation.
 16

17 6. Each of the parties' undersigned representatives certifies that they are fully
 18 authorized to enter into and execute the terms and conditions of this Stipulation and do hereby
 19 agree to the terms herein.
 20

21 7. The terms of this Stipulation shall become effective upon entry of an order by
 22 the Court ratifying the Stipulation.
 23

24 Respectfully submitted this 20th day of September, 2010.
 25

26
 27 Respectfully submitted,
 28

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1 IGNACIA S. MORENO
2 Assistant Attorney General
3 Environment & Natural Resources Division

4 /s/ J. Brett Grosko

/s/ David S. Mann (with permission)

5
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Counsel for Federal Defendants

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ORDER

The Stipulated Settlement Agreement of the parties, dated September 20, 2010, is hereby approved.

Dated this 27 day of September 2010.



RICARDO S. MARTINEZ
UNITED STATES DISTRICT JUDGE

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